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OF TRANSPORT TERMINALS IN
INTERNATIONAL TRADE
Vienna, 2-19 April 1991

COMPILATION OF COMMENTS AND PROPOSALS BY GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS ON THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

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INTRODUCTION

The present addendum 1 to document A/CONF.152/7 sets forth the comments and proposals of Governments and international organizations on the draft Convention on the Liability of Operators of Transport Terminals in International Trade that were received between 18 December 1990 and 6 March 1991. During this period comments and proposals were received from the following Governments and international organizations:

Governments: Mauritius, Mexico, Morocco, Netherlands, Poland and Sweden

Intergovernmental organizations: Organization of African Unity (OAU) and United Nations Environment Programme (UNEP)

Non-governmental organizations: International Road Transport Union (IRU)

COMPILATION OF COMMENTS AND PROPOSALS

States

MAURITIUS

[Original: English]

The draft Convention only applies to transport-related services and it does not modify any rights or duties which may arise under any international convention relating to international carriage of goods. The Government of Mauritius notes that under Article 5 of the draft Convention "the contributory negligence" is not specified as a defence (either partial or complete) to any liability.

MEXICO

[Original: Spanish]

The Mexican Government appreciates UNCITRAL's efforts in preparing the draft Convention. This document is the logical result of work done by UNCITRAL and other international agencies on the international carriage of goods. There is a need for an international convention to regulate the liability of the operators of international transport terminals, since the conventions on carriage are restricted to certain aspects of that activity and since it is, apparently, during the intermediate stages of carriage, and especially before and after carriage, that goods most frequently suffer damage or loss.

Article 1

It is advisable to define the "person entitled to take delivery of the goods". This term is used in articles 3, 4, 5 and 11. In particular, since article 4 also mentions the customer, we need to know who the customer is - the loader, the carrier or the consignee? The person entitled to take delivery of the goods may be a carrier, another operator, the consignee or the bearer of the bill of lading.

It is also necessary to examine the definition of "customer".

Article 4

In connection with paragraph (4), it should be noted that article 14, paragraph (3) of the "Hamburg Rules" contains a definition of signature. There is a similar definition in article 5, paragraph (3) of the Convention on Multimodal Transport. On the other hand, article 5, paragraph (k) of the United Nations Convention on International Bills of Exchange and International Promissory Notes expresses a different view of signature.

The wording adopted in the draft makes a non-handwritten signature dependent on the absence of incompatibility with the law of the country where the document is signed. This proviso is incompatible with uniformity and gives rise to much uncertainty. In any case, it would be preferable to authorize a reservation. The conformity achieved when negotiating the above-mentioned Convention on negotiable instruments shows that this is not necessary.

When this latter Convention was discussed, the initial proposal was for a wording similar to that used in the draft Convention we are currently considering. The idea of a reservation was envisaged. In the course of the work to draft the reservation, the subject was given wide discussion and it was one of the "most controversial questions", since the concept of signature is of substantial importance in matters relating to the law governing negotiable instruments. The definition formulated on that occasion was more satisfactory for the majority of countries than the text similar to that now proposed in article 4.

Recommendation: (i) eliminate the uncertainty surrounding the concept of signature (there are three different definitions); (ii) adopt the definition embodied in the Convention on Bills of Exchange and Promissory Notes because it offers advantages over the previous definitions.

MOROCCO

[Original: French]

1. Carriage by air:

The definitions in article 1 and the scope of application described in article 2 of the draft indicate that their application does not relate to the national air transport company (RAM) in its capacity of carrier.

Indeed, it emerges from article 1(a) that the status of operator, whose responsibility the text is designed to determine, does not include the persons responsible for the goods by virtue of the rules governing carriage.

Since the responsibility of the national air transport company (RAM) in this regard is governed by the Warsaw Convention, it will thus not be subject to the rules set out in the draft Convention.

2. Carriage by road:

Regarding carriage by road, the draft Convention will fill a legal gap at the meeting points between carriage effected by different modes of transport.

The importance of the draft Convention lies in the fact that its scope of application covers the services rendered by the operator of a transport terminal (storage, loading, unloading, stowage, etc.) with reference to goods involved in international carriage.

NETHERLANDS

[Original: English]

General comments

The Netherlands Government has taken note of the draft Convention with much interest and appreciation. The principal reason for unifying the rules relating to the liability of terminal operators is to fill gaps in the liability regimes left by the international transport conventions before, during and after carriage as well as between different stages of the transport. On the one hand the draft Convention gives due protection to persons with interests in cargo and on the other hand it facilitates recourse by carriers, multimodal transport operators, freight forwarders and similar entities against the terminal operator, when they are held liable for loss of or damage to the goods caused by the terminal operator during the period that they are responsible for the goods.

The Netherlands Government is aware that there is room for improvement of the general conditions used by the various terminal branches, but doubts whether this could be achieved through a common system of liability for the following reasons.

The draft Convention is applicable to terminal operators handling goods involved in international carriage by sea, air, road and inland waterway. There exists a wide variety of types of operators dealing with different types of goods and performing different types of services. Furthermore the operators represent a wide range of technical and operational sophistication. In view of these different factual circumstances in which terminal operators perform their services, the Netherlands Government is not convinced that the different branches of terminal operators should necessarily be governed by the same liability system. For instance according to article 5 of the draft Convention the liability system is based on the principle of presumed fault or neglect. The operator is exonerated from liability only if he is able to

prove that he, his servants, agents or other persons of whose services he makes use for the performance of transport-related services took all measures that could reasonably be required to avoid the occurrence and its consequences. This reversal of the burden of proof means that under the provisions of the draft Convention it will not be possible for the operator to demonstrate that he is not liable. In practice, operators handle huge amounts of widely varying goods without being in a position to assess their condition and quality. Operators would consequently find it difficult if not impossible to prove that they or their servants, agents or other persons of whose services they make use, had taken all reasonable measures to avoid the occurrence or its consequences. It should also be noted that operators often have difficulty in determining in advance what measures should be taken since documents do not always adequately reveal the specific nature of individual goods. It would moreover be impossible to expect operators to possess sufficient knowledge about all the goods received for handling to allow appropriate measures to be taken in all cases. Each branch of industry has its own conditions governing liability and these conditions reflect the specific situation in the branch in question. Although the Netherlands Government is convinced that the uniform rules of the draft Convention should mean an improvement in certain branches of the terminal operator's industry, this does not mean that the liability of an ore transshipment company or a cheese warehouse should be increased to the same extent as that of the major container terminal in Rotterdam.

Therefore the draft Convention should leave the possibility to the national legislator to apply the draft Convention according to specific circumstances applicable in each branch. The Netherlands Government would like to make the following proposal:

Article

Any State may declare at the time of signature, ratification, acceptance, approval or accession that it shall restrict the application of the rules of this Convention to certain types of terminal operators.

This article should be inserted after Article 19.

The following comments made on certain articles do not constitute a definitive and final expression of views of the Netherlands Government. The Government reserves the right to make further proposals for changes in these and other articles at the diplomatic conference due to be held in April 1991 in Vienna.

Article 1. Definitions

Article 1, littera (a)

The sentence "However, a person shall not be considered an operator whenever he is responsible for the goods under applicable rules of law governing carriage" is not clear. The result of this sentence should not be that a carrier who has legally--for instance according to the Hague-Visby Rules--exonerated his liability in a before-and-after clause, and who is therefore not responsible for the goods under applicable rules of law governing carriage, is made responsible under the rules governing the liability of terminal operators.

The Netherlands Government would like to propose to replace the sentence by the following sentence:

> However, a person shall not be considered an operator whenever rules of law governing carriage are applicable to him.

Article 1, littera (c)

The uniform rules are applicable when the goods are involved in international carriage. It should be made clear that this is the case whenever in a single contract of carriage the place of departure and the place of destination are located in two different States. The definition as it reads now could mean that goods which are carried under a contract in one State from one place to another and then stored, waiting for carriage to another country under another contract, are governed by the uniform rules.

The Netherlands Government would like to propose to insert in littera (c) after the words "in which": according to the contract.

Article 1, littera (d)

It should be made clear that the term "transport-related service" means the physical handling of the goods and not, for example, financial services with respect to the goods. In practice, operators nowadays already often finance certain services in relation to the transportation of goods. In future this could easily be interpreted as a transport-related service. The Netherlands Government therefore would like to propose to replace the definition of transport-related services by the following definition:

> "(d) 'Transport-related services' means services regarding the physical handling of the goods such as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing."

Article 5. Basis of liability

The draft Convention does not contain any specific provisions concerning consequential damages. The UNCITRAL Working Group, which prepared the draft Convention, has found it a matter for national law to determine whether such damage falls under the terms of the Convention. The Netherlands Government is convinced that it should be made clear that Article 5 does not include consequential damages. Therefore we would like to propose to add a new paragraph (5) to Article 5:

> "(5) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are according to article 3 delivered, or should have been delivered. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference of the normal value of the goods of the same kind and quality."

Article 8. Loss of right to limit liability

The inclusion of servants or agents in article 8 encounters serious objections. Limitation is inherently unfair, but it is assumed that in order to be able to exercise his profession an operator has to be able to assess the risks involved and insure against them. Appeals by operators to limit the extent of their liability are therefore admissible. If these limits were broken, operations would be placed in a precarious and uncertain situation. The whole concept of limitation would become illusory if too many cases existed in which limits might be exceeded, since operators would still have to insure themselves for the full amount of damages. In practice this would often mean that a consignment was doubly insured, since the party interested in the goods would tend to have taken out a transport insurance to cover the goods through the entire transport process.

The increased risk will lead to a corresponding increase in the premium of an operator insuring himself against liability, a factor which will be reflected in the charges. Admittedly, the premiums for transport insurance might fall, but in practice this rarely happens, since the increase in the transport insurer's right of recourse against the liability insurer will not reduce the former's costs. Article 8 of the draft Convention provides that the operator shall not be entitled to limit his liability if the damage resulted from an act or omission of the operator himself or his servants or agents, done with the intent to cause damage, or recklessly and with knowledge that such damage would probably result. This applies even if the servants or agents acted outside the scope of their employment. For the reasons outlined above, the Netherlands Government believes that it should be permissible to break the limits only in exceptional cases, to avoid reducing the significance of the limits set. It should therefore only be possible to break the limits in cases where the operator himself acts with intent to cause damage or with deliberate recklessness.

In respect of paragraph (1) the Netherlands Government would like to propose to delete the words: "himself or his servants or agents."

Article 22. Entry into force

The principal reason for unifying the rules relating to the liability of terminal operators is to fill the gaps in the liability regimes left by the international transport conventions, therefore the convention should enter into force after the deposit of the fifteenth instrument of ratification, acceptance, approval or accession.

POLAND

[Original: English]

1. The draft Convention ought to determine clearly its aim. The aim is mentioned indirectly in the report of the United Nations Commission on International Trade Law on the work of its twenty-second session (A/44/17).

2. An operator of a transport terminal and the scope of its liability should be defined more precisely.

3. It is important for the understanding of article 6, paragraph (1) to underline in the text that the Convention refers to transport by rail, or by rail and sea or inland waterways.

4. Article 10, paragraph (4). So as to avoid needless recourse actions related to the decision of the operator about the sale of goods, the paragraph ought to determine precisely the kind and number of reasonable efforts to give notice of the intended sale to the owner of the goods, the person from whom the operator received them and the person entitled to take delivery of them from the operator.

5. Article 12. In our opinion paragraph (3) is not necessary if we take into account the text of paragraph (2).

SWEDEN

[Original: English]

General remarks

1. The Swedish Government welcomes and would like to reiterate its general support for the work carried out by the Working Group on International Contract Practices and by the Commission itself at the twenty-second session. The draft Convention constitutes a solid basis for further negotiations at the forthcoming Diplomatic Conference with the aim of elaborating a liability regime for operators of transport terminals and thereby filling a gap in the chain of transport. The Government also maintains its previous position that a Convention would be the most suitable way of achieving uniformity in this field of transport law.

Comment on specific articles

2. The Swedish Government would like to refer to its comments previously submitted with a letter of 30 November 1988 [...]. These comments concern Articles 1, 2, 3, 5 and 6 of the draft Convention. They are also contained in the compilation of comments by Governments and international organizations prepared for the twenty-second session of the Commission (A/CN.9/319). The Government assumes that it would be unnecessary to repeat its previous comments now, but that the secretariat will find a suitable way of ensuring that they will be published as part of the pre-session documentation for the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade.

[The comments submitted by Sweden for the twenty-second session of the United Nations Commission on International Trade Law, and published in the document entitled "Compilation of comments by Governments and international organizations on the draft Convention on the Liability of Operators of Transport Terminals in International Trade" (A/CN.9/319), are reproduced below, immediately after paragraph 9 of the Swedish comments submitted to the present United Nations Conference.]

3. As a complement to the comments already submitted and in the light of the negotiations at the twenty-second session, the Swedish Government would, however, like to add the following remarks for consideration at the Conference.

Article 6: Limits of Liability

4. The present draft Convention does not contain any rules that put an obligation on the operator to take and maintain insurance to cover his liability under the Convention. The Government has previously expressed its concerns about this lacuna in the Convention.

5. Furthermore, the draft Convention does not set any maximum limit as to the aggregate amount of claims that could result from a major accident in a terminal and for which the operator could be mandatorily liable, with or without a right to limit his liability for every individual claim.

6. In many of the major international trade terminals there are being stored or otherwise handled enormous quantities of goods at one and the same time. The value of the goods would be gigantic and very possibly there would be no practical means of establishing the aggregate value of the goods handled at any one occasion.

7. It has been pointed out by representatives for Swedish insurers that there are strong reasons to doubt whether it would at all be possible to find capacity in the liability insurance market to cover such unlimited liability. At the very least one could expect that the interest of insurers to offer liability insurance, concerning the great risks and uncertainties involved in this field, would be very limited - if any - and that the insurance premiums would be very high or even prohibitive. It might prove impossible for the operator to cover his liability with insurance whether he would like to do so or not. Should these concerns come true, the value of the suggested regime would indeed be very limited.

8. With regard to the aforementioned the Conference seems to have good reasons to seriously reflect on the need for complementing the present Article 6 with a maximum limit ("a global limit") for the liability of the operator which can not be exceeded even in case of an accident of a catastrophic nature.

Article 10: Rights of Security in Goods

9. During the twenty-second session a proposal was made and supported by the Swedish Government that the operator's right of retention over the goods should be extended to cover not only costs and claims that were incurred during his period of responsibility for the goods, but also those which were incurred after his period of responsibility had expired (cf. Article 3). An example given was that of storage fees that had continued to accrue after the time the goods should have been collected by the person entitled to receive them. The proposal was accepted by the Commission and referred to the Drafting Group (cf. the report on the work of the twenty-second session, paragraph 126). This decision was, however, overlooked by the Drafting Group and is not reflected in the present draft Convention. The Swedish Government reiterates its support for the proposal and recommends that the draft Article 10, paragraph (1), be changed accordingly.

[The following comments of Sweden were made to the twenty-second session of the United Nations Commission on International Trade Law (Vienna, 16 May - 2 June 1989). The comments were published in the document entitled "Compilation of comments by Governments and international organizations on the draft Convention on the Liability of Operators of Transport Terminals in International Trade" (A/CN.9/319), and are reproduced here at the request of Sweden (see above, paragraph 2 of the Swedish comments to the present United Nations Conference).]

General observations

The Swedish Government welcomes the work that has been carried out by the Working Group on International Contract Practices. The draft Convention constitutes a solid basis for further negotiations aiming at elaborating a liability regime for operators of transport terminals.

The Swedish Government realizes--and would like to underline--that the draft Convention represents a compromise between different views and between various legal systems. Therefore, the solutions chosen to solve different problems do not necessarily represent the position that the Swedish Government would have preferred in the first place.

The interest of establishing a liability regime in this field of transport law and filling out the existing gaps in the chain of transport must, however, be considered to be of such importance that the draft could basically be accepted.

As regards the form of the proposed regime, the Working Group has recommended a convention. In previous stages of the negotiations within the Working Group, the form of a model law has also been considered.

An important factor, when making the choice between these two alternatives, is the fact that the Hamburg Rules and the Multimodal Convention, which to a great extent have served as models for the proposed Convention, have not yet entered into force. This should not, however, be the determinant factor for the choice to be made. Of major interest is the desirability of achieving the greatest possible uniformity in this field of transport law.

The Swedish Government can accept that the liability regime in question is laid down in the form of a convention. For States which are not prepared to accept this solution and the internationally binding nature of a convention the proposed Convention could serve as a model for national legislation. Such States could later on decide whether or not to ratify the Convention. This could also be a way to reach uniformity.

After these general remarks, the Swedish Government would like to make a few comments on some of the proposed articles of the Convention, keeping in mind as mentioned above their nature of well reasoned compromise solutions.

Comments on specific articles

Article 1

(a) One of the requirements for regarding a person as an operator of a transport terminal is that he undertakes to "take in charge" goods ... etc. The meaning of the expression "take in charge" should be clarified to make it perfectly clear in what situation the regime is applicable or not. Would for instance some activity from the operator be required with regard to the receipt of the goods, or would it be sufficient that the goods are left on the quay for later instructions concerning their destination etc. to make the rules apply?

(b) The definition of "goods" is not entirely clear on some points. Would the definition for instance cover live animals and furniture removal (cf. article 1, paragraph (4), in the CMR)? Some clarification seems to be needed in this respect.

(e) (f) The definitions under these two paragraphs exclude the possibility of using oral notices and requests under several draft articles in the Convention. The Swedish Government is not in favour of this exclusion. It had been preferable to leave it to the parties involved to determine the appropriate form of notice to use in accordance with good commercial practice and to protect their interests. To require a specific form would furthermore create confusion within those legal systems, among them the Swedish one, where it is left to the courts to decide upon the value of the evidence presented before them, whether in writing or orally by a witness.

Article 2

The rules apply only to goods which are involved in international carriage. It could be argued that, for logical reasons, this is not the best solution. Different rules could apply to the same kind of goods in a terminal depending on the place of destination. This could cause confusion and have the result that "national goods" are treated with less care than goods headed abroad. However, the Swedish Government will not oppose the proposed solution.

Article 3

With regard to the use of the words "taken in charge" the same arguments could be put forward as under article 1.

The period of responsibility for the goods expires when the operator has handed them over or "made them available to" the person entitled to take delivery of them. This seems to be a very strict rule from the customer's point of view. It implies that the operator does not have to take care of the goods and has no responsibility for them if there is a delay in collecting the goods within the agreed period of time. It could be argued that the operator's responsibility should not be allowed to expire unless he has notified the recipient and urged him to collect the goods. If the reasoning behind the present stipulation is to avoid terminals being used for lengthy storage, it would of course be possible to counteract such practice by increasing the storage fees.

Article 5

The word "loss" in the opening words of paragraph (1) "The operator is liable for loss resulting from loss of or damage to the goods" might well be and has been interpreted to include consequential loss. Against this background, it has been observed that this makes the extent of the operator's liability uncertain. In the Working Group, however, it was probably thought that whether or not a claimant could recover consequential loss in a particular case would be dependent on the rules of the applicable legal system. Since the wording has given cause for some doubt, it could prove valuable to give the paragraph some further consideration.

Article 6

The Swedish Government can support the approach chosen in paragraph (1) which implies a limitation per kilogramme and not--as an alternative--based on the number of packages or shipping units. As regards the arguments in favour of this solution, the Swedish Government would like to refer to those contained in the report from the tenth session of the Working Group in Vienna (A/CN.9/287, paragraph 34).

The Swedish Government would, for the time being, like to reserve its position with respect to the specific limitation amounts. It should, however, be stressed that the amounts ought to be adjusted to other limitation amounts in the field of transport legislation in order to make recourse actions possible on a back-to-back basis between operators and carriers.

Furthermore, it seems to be important to note that the final decision on the amounts will, among other things, depend on the reservation clauses to be elaborated by the Commission (cf. paragraphs 45 and 96 of the report of the Working Group on its eleventh session, A/CN.9/298).

Final remarks

In the view of the Swedish Government, it would have been preferable, had the draft Convention contained rules that put an obligation on the operator to cover his liability with insurance. Proposals to introduce such an obligation have not, however, met with great sympathy in the Working Group. Unfortunately, the liability regime could prove to be of less value, should the operator turn out to lack the financial means to cover claims that are made against him.

The observations hereby submitted should not be regarded as exhaustive. The Swedish Government reserves the right to submit further observations or proposals during the Diplomatic Conference in April.

Intergovernmental organizations

ORGANIZATION OF AFRICAN UNITY (OAU)

[Original: French]

1. Article 5, paragraph 3, contains vague terms which could give rise to dispute and pose problems of application. In place of "dans un délai raisonable" = "within a reasonable time", it would be advisable to specify the number of days, as is done in other articles.

2. Article 18, paragraph 3, stipulates that: "This Convention is open to accession by all States which are not signatory States as from the date it is open for signature".

We suggest that this wording be slightly corrected to read as follows: "This Convention is open to accession by all States which are not signatory States as from the date on which it comes into force".

UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

[Original: English]

1. The scope of liability in the draft Convention on the Liability of Operators of Transport Terminals in International Trade is different from that of a protocol on liability which is being elaborated by UNEP in accordance with Resolution 3 of the Basel Conference of March 1989. While the draft Convention covers liability for the loss resulting from, or damage to goods, or delay in handling of the goods, the draft elements of a protocol, currently being developed by an ad hoc working group convened by UNEP, does not cover the liability for the goods (hazardous wastes) or delays in handling them: it covers the damage resulting from the hazardous effects of such wastes, e.g., life, injury, environment, properties.

2. Due to the difference in the scope between these two legal instruments, the channeling of liability is also different. In the draft Convention, the liability is channeled to the operator (as defined in Article 1). On the other hand, in the draft elements in a protocol under consideration in UNEP, the liability is channeled to the generator with a possible residual liability on the disposer duly authorized to receive wastes in accordance with the Basel Convention.

3. Because of the differences in the scope as well as in the channeling of liability, the other provisions in these legal instruments, which are developed on the basis of these provisions, are different from each other. In this context, the draft Convention and the draft elements for a protocol to the Basel Convention are not contradictory, and do not overlap.

4. However, the obligations set out in Article 9 of the draft Convention regarding the special rules on dangerous goods should be paid attention to with respect to the obligations set out under the Basel Convention.

5. Article 9 of the draft convention permits the handling, by the operator, of dangerous goods without being marked, labelled, packaged, or documented in accordance with any law or regulation and even without the knowledge of the operator, of the nature of the goods, being handled by the operator. Due to the lack of such information, i.e., the ignorance of the operator of the nature of goods, the draft Convention, in its Article 9, paragraph (a), permits the operator to take all precautions that circumstances may require, including that of destroying the goods, if harmful to the environment.

6. Under the circumstances, it would appear that Article 9 of the draft Convention is not in accord with the provisions of Article 4(7) of the Basel Convention, which reads as follows:

> "Furthermore, each Party shall:
>
> (a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes, unless such persons are authorized or allowed to perform such types of operations;
>
> (b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement, be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling and transport, and that due account is taken of relevant internationally recognized practices;
>
> (c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences, to the point of disposal."

Non-governmental international organizations

INTERNATIONAL ROAD TRANSPORT UNION (IRU)

[Original: French]

Preamble

"The contracting parties, recognizing the value of regulating in a uniform manner the rights and obligations of operators of international goods transport terminals, particularly with regard to the document issued and their liability, have agreed as follows:"

Article 1

Definitions

(a) Instead of the expression: "in an area under his control or in respect of which he has a right of access or use.", would it not be preferable to define the term: "Terminal": "place where the goods are placed in the charge of the operator"?

New (b) The term: "Person" means both physical and juridical persons.

(b) Replace the term "article" by "vehicle" of transport.

Article 2

Scope of application

(b) and (c) Add: "performed by an operator".

(3) Delete.

Article 3

The operator is responsible for the goods involved in international carriage from the time he has taken them in charge to the time he has handed them over.

Article 4

Issuance of document

(1) It is important for the operator to issue a document acknowledging receipt of the goods because he must first identify the goods (national or international origin) and check their condition. Exemption from issuing such a document (article 4.2) should not be allowed, in order to avoid subsequent disputes.

(a) Without checking by the operator!

(2) In the French text replace "moyen de transport" by "mode de transport".

Article 5

Basis of liability

(1) "The operator is liable for total or partial loss, or damage, occurring from the time he has taken the goods in charge to the time he has handed them over, as well as for delay in handing them over. He is discharged from such liability if he proves that he, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services took all measures that could reasonably be required to avoid the detrimental occurrence."

(2) "If the measures referred to in paragraph (1) have not been taken and this failure ..."

(3) "Delay occurs when the goods have not been handed over by the operator within the time agreed or, in the absence of such agreement, within a period of 30 days of receiving a request for the goods."

(4) "Goods which have not been handed over by the operator at the end of a period of 30 days from the agreed date or, in the absence of such agreement, within a period of 30 days from the request for the goods shall be treated as lost."

Article 6

Limits of liability

The indemnification, in the event of loss or damage to the same goods, should be calculated not according to different limits of liability depending on the involvement of one means of transport or another, which leads to unequal legal treatment, but according to the value of the goods at the date and time when the goods were taken in charge by the operator.

This value should be determined by the price ruling on the exchange or, in the absence of such a price, the current market price or, in the absence of either, the normal price of goods of the same nature and quality. In any case, the indemnity due from the operator shall not be lower or higher than that, where applicable, due by the customer to his principal.

If the present draft text of the Convention is retained, there is a case, on grounds of equity, for also taking into consideration goods carried by piggy-back transport and roll-on/roll-off ships.

The addition of the following paragraph is proposed:

(c) "If the goods originate from carriage involving piggy-back transport or roll-on/roll-off ships, the liability of the operator for detriment resulting from losses of or damage to the goods, in accordance with the provisions of article 5, is limited to an amount not exceeding that owing to the customer by the carrier."

Article 10

Rights of security in goods

The guarantees over the goods given to the operator by article 10 are not accompanied by a corresponding guarantee of the liability of the operator in respect of the carrier.

Should there not be a new article including a system of surety or compulsory insurance by the operator similar to that contained in article 13 of the Convention on Liability for Damage Caused during the Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels, of 10 October 1989?

Article 12

Limitation of actions

Delete paragraph (4) of article 12.

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Corrigendum

Page 3

At the end of Article 4 insert

In any event, it is absolutely necessary to eliminate the condition whereby the non-handwritten signature should not be incompatible with the laws of the country where the document is signed. If it is deemed necessary to retain the condition, it will be better to establish a reservation. This would be a step backwards compared with other instruments and with international trade practices.

Article 6

This establishes limits of liability which seem low if one considers the limits which appear in other international conventions, such as article 6 of the "Hamburg Rules" and article 18 of the Convention on Multimodal Transport. Furthermore, experience indicates that loss and damage occur most frequently during the stages covered by the Convention. All this makes it advisable to raise the limits of liability at least to the levels of the other agreements mentioned.

In addition, it is worth noting that considerable time may elapse between an event triggering liability and payment of compensation. It is therefore reasonable to stipulate (e.g. article 70 of the Convention on International Bills of Exchange and International Promissory Notes and article 78 of the Convention on Contracts for the International Sale of Goods) the obligation to pay interest and also to compensate the losses that may be caused by exchange rate fluctuations. Otherwise, even when in compliance with a national law the person suffering damage may demand such facilities, the person liable may argue that the limit of his liability also includes interest and exchange losses.

As regards liability for delay, fixed with reference to the total charges payable to the operator, the limit is very low since the operator only risks his payment and nothing else.

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The article mentions charges payable to the operator, leading one to think that other additional charges that may be made by the operator do not contribute to forming the limit. This matter should be re-examined.

Article 10

The Mexican Government appreciates the fact that, during the twenty-second session of UNCITRAL, the criterion that the sale of goods may only be effected if permitted by the law of the State where the goods are located has apparently been adopted. The criterion previously set out in the draft, whereby the sale could be made if authorized by the law of the State where the operator had his establishment, would have rendered the Convention incompatible with the basic principles of our legal system, which does not allow sale without the legal hearing of the owner. Other States with similar systems might have the same objection.